September 2021

Decision in CPLR Article 78 proceedings - Rhodes, William (2016-10-18)

Matter of Rhodes v NYS Bd. of Parole
2016 NY Slip Op 32169(U)
October 18, 2016
Supreme Court, St. Lawrence County
Docket Number: 147987
Judge: S. Peter Feldstein

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

In the Matter of the Application of
WILLIAM RHODES, #80-C-0431,
Petitioner,

DECISION AND JUDGMENT
RJI #44-1-2016-0430.07
INDEX #147987

For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

NYS BOARD OF PAROLE,
Respondent.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of William Rhodes, verified on June 29, 2016 and filed in the St. Lawrence County Clerk's Office on July 14, 2016. Petitioner, who is an inmate at the Gouverneur Correctional Facility, is challenging the October 2015 determination denying his discretionary parole release and directing that he be held for an additional 24 months. The Court issued an Order to Show Cause on July 18, 2016, and has received and reviewed respondent's Answer and Return verified on September 23, 2016, including confidential Exhibits B, C and I. The Court has also received and reviewed the petitioner's Reply dated October 4, 2016 and filed with the St. Lawrence County Clerk on October 7, 2016.

On July 22, 1980, Petitioner was sentenced by the Monroe County Court to an indeterminate term of incarceration of twenty-five (25) years to life for each of two counts upon the conviction of Murder in the Second Degree, to an indeterminate term of incarceration of five (5) to fifteen (15) years upon the conviction of one count of Promoting Prostitution in the Second Degree, and to a determinate term of incarceration for one (1) year upon the conviction of one count of Assault in the Third Degree. He was received into the custody of the Department of Corrections and Community Supervision (hereinafter

referred to as "DOCCS") on July 22,1980 and made his initial appearance before a Parole Board in what appears to be 2004. In the matter at bar, the petitioner again appeared before the Parole Board on October 21, 2015. Following that appearance, Petitioner was denied discretionary parole release and it was directed that he be held for an additional 24 months. The parole denial determination reads as follows:

> "Denied. Hold 24 months. Next appearance, 10/17
>
> After review of the record and interview, this panel has determined if released at this time, your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law. The Board has considered your institutional adjustment including discipline and program participation. Required statutory factors have been considered, including your risk to society, rehabilitation efforts, and your needs for successful re-entry into the community. Your release plans have also been considered. More compelling, however, is the extreme violence and sadistic behavior you and your co-defendant engaged in when a female victim was murdered after being brutally assaulted and electrocuted. She was also cut from between her legs to the middle of her chest and her internal organs were removed. The heinous mutilation of this victim is an aggravating factor that is of concern to this panel. On another occasion, you and your co-defendant compelled the female victim to engage in prostitution. The board notes the length of time you have served, COMPAS risk score, general business vocation completion, food service vocation, music program, drafting and other program completions. The board also notes your letter from the Osborne Society. All factors considered, your release at this time is not appropriate."

An administrative appeal from the October 2015 parole denial determination was filed on petitioner's behalf to the DOCCS Board of Parole Appeals Unit on October 30, 2015. On or about March 16, 2016, the parole denial determination was affirmed. This proceeding ensued.

Petitioner alleges that the respondent failed to consider the statutory factors contained in Executive Law §259-i(c)(A) and only focused on the petitioner's underlying crime. The petitioner further alleges that the Parole Board failed to specify the reasons for denial and he asserts that the denial was predetermined by the members of the Parole

Board. The petitioner argues that he will never be granted parole based upon the Parole Board's reliance solely on the nature of the instant offense and the Parole Board refused to advise him what, if anything, he would need to do for future appearances before the Board. The petitioner also argues, albeit in somewhat cryptic or conclusory fashion, that the Board's denial: lacked detail; that double jeopardy prevented the Board from essentially re-sentencing the petitioner for the instant offense; that the Board was collaterally estopped from relitigating the same factors as the trial court; that the Board failed to consider the petitioner's re-appearances status; that the 24 month hold was excessive; and, that the Board's decision was irrational.

Respondent argues that the petitioner failed to exhaust administrative remedies relating to certain claims contained in the petition. Specifically, the respondent argues that only four arguments raised in this petition were also raised in the appeal to the Board of Parole Appeals Unit. In such appeal, John A. Cirando, Esq. argued that the Parole Board failed to: properly weigh and consider the factors in Executive Law §259-i(c)(A) and 259-c(4); consider any of the petitioner's positive programming while incarcerated and solely focused on the nature of the offense; and the denial of parole was predetermined. As such, the respondent's assertion that the petitioner failed to exhaust administrative remedies pertaining to the new arguments is correct and only those issues raised on administrative appeal by Attorney Cirando will be considered herein.

Executive Law §259-i(c)(A), as amended by L 2011, ch 62, part C, subpart A, §§38-f and 38-f-1, effective March 31, 2011, provides in relevant part, as follows:

> "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so

> deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; ... (iii) release plans including community resources, employment, education and training and support services available to the inmate; ... (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement."

Discretionary parole release determinations are statutorily deemed to be judicial functions which are not reviewable if done in accordance with law (Executive Law §259-i(5)) unless there had been a showing of irrationality bordering on impropriety. *See Silmon v. Travis*, 95 NY2d 470; *Hamilton v. New York State Division of Parole*, 119 AD3d 1268; *Vasquez v. Dennison*, 28 AD3d 908 and *Webb v. Travis*, 26 AD3d 614. Unless the Petitioner makes a "convincing demonstration to the contrary," the Court must presume that the New York State Board of Parole acted properly in accordance with statutory requirements. *See Jackson v. Evans*, 118 AD3d 701, *Nankervis v. Dennison*, 30 AD3d 521 and *Zane v. New York State Division of Parole*, 231 AD2d 848.

The petition focuses upon the argument that the Parole Board failed to adequately consider or properly weigh all of the required statutory factors and instead relied excessively on the nature of the crimes underlying Petitioner's incarceration as well as his prior criminal record. However, in his testimony before the Parole Board, petitioner was

asked what prompted his epiphany to become a born-again Christian in 1987 after having been convicted of a sadistic crime. Petitioner responded:

> "Well, I wasn't the one that planned that type of crime. I wasn't the one that committed the acts. My co-defendant is. One of his prostitutes was doing some things wrong and he held a mock trial in his apartment. And during the mock trial, my role was to say guilty, kill the B (sic). That was my role and I said that. I didn't think that he was going to kill this woman or was intentionally trying to kill the woman because we both had . . ." Resp. Ex. E(5:1-5).

At the conclusion of the hearing, the petitioner was asked if there was anything further that he wished to add to the proceedings and the petitioner made the following statement:

> "I'm very sorry this woman was murdered. I'm very sorry and I've been suffering for something I didn't do for another man's actions. I wasn't in agreement with this man to do this type of thing. It was horrendous. I'm not like that. And I wish you would give me a chance." Resp. Ex. E (6:11-14).

A Parole Board need not assign equal weight to each statutory factor it is required to consider in connection with a discretionary parole determination, nor is it required to expressly discuss each of those factors in its written decision. *See Montane v. Evans*, 116 AD3d 197; *see also Valentino v Evans*, 92 AD3d 1054 and *Martin v. New York State Division of Parole*, 47 AD3d 1152. As noted by the Appellate Division, Third Department, the role of a court reviewing a parole denial determination

> ". . . is not to assess whether the Board gave the proper weight to the relevant factors, but only whether the Board followed the statutory guidelines and rendered a determination that is supported, and not contradicted, by the facts in the record. Nor could we effectively review the Board's weighing process, given that it is not required to state each factor that it considers, weigh each

> factor equally or grant parole as a reward for exemplary institutional behavior (internal citations omitted)." *Comfort v. New York State Division of Parole*, 68 AD3d 1295, 1296.

In the case at bar, reviews of the Parole Board Report and transcript of Petitioner's October 21, 2015 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including Petitioner's educational and therapeutic programming records, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, disciplinary record and a letter of support from the Osborne Society regarding release, as well as information with respect to the circumstances of the crimes underlying his incarceration and prior criminal record. The Court, moreover, finds nothing in the hearing transcript to suggest that the Parole Board denied the Petitioner an opportunity to answer questions or provide insight into how and why he believed that he would be a good candidate for release. Indeed, the Petitioner admitted his role in the mock trial held in the co-defendant's apartment wherein the petitioner "found" the victim guilty and pronounced a sentence of death. Yet, based upon the petitioner's testimony, it did not appear that the petitioner accepted his responsibility in the crime and was focused on his own suffering as a result of his time in prison.

In view of the foregoing, the Court finds no basis to conclude that the Parole Board failed to consider the relevant statutory factors. *See Pearl v. New York State Division of Parole*, 25 AD3d 1058 and *Zhang v. Travis*, 10 AD3d 828. Since the requisite statutory factors were considered, and given the narrow scope of judicial review of the discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality bordering on impropriety as a result of the emphasis placed by the Board on the nature of the crimes underlying Petitioner's

incarceration and that the petitioner still displayed "very little grasp on the gravity and magnitude of this heinous crime". *See Neal v. Stanford,* 131 AD3d 1320 and *Confoy v. New York State Division of Parole*, 173 AD2d 1014; *see also Graziano v. Evans*, 90 AD3d 1367, 1369 ["while the Board may not consider [ ] factors outside the scope of the applicable statute, including penal philosophy', it can consider factors—such as remorse and insight into the offense—that are not enumerated in the statute but nonetheless relevant to an assessment of whether an inmate 'present[s] a danger to the community.' "]

Similarly, "[t]he record belies petitioner's contention that the Board's determination denying his request for parole release was predetermined. Rather, the parole hearing transcript and the Board's determination establish that the relevant statutory factors were considered, including the nature of the crime, petitioner's institutional achievements, disciplinary record and plans upon release (see Executive Law § 259–i[2][c][A]). Although the Board placed particular emphasis on the heinous nature of the crime, the Board was not required to give equal weight to each factor it considered in rendering the determination." *Hakim-Zaki v. N.Y. State Div. of Parole*, 29 AD3d 1190, 1190.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: October 18, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice